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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 248 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULJABBAR MOHMMEDHANIF SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Civil Revision Application No. 248 of 2003

MR SURESH M SHAH for Petitioner No. 1-4

MR MEHUL S SHAH for Petitioner No. 1-4

MR JM CHAUHAN AGP for Respondent No. 1

MR NS SHETH for Respondent No. 2-3

MR RM CHHAYA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/01/2004

ORAL JUDGEMENT

The petitioners herein are the original plaintiffs of Civil Suit No.4421 of 2001, which is pending in the City Civil Court at Ahmedabad. In the said suit, the plaintiffs have prayed that the defendants may be directed to hand over the possession of the disputed property, which is a shop, to the plaintiff. The plaintiff has also prayed for permanent injunction in the plaint. Since initially, the suit was filed on a fixed court fees stamp the Court Fees Inspector initiated the inquiry under the Court Fees Act and according to the Court Fees Inspector the suit is undervalued. The Court Fees Inspector submitted his report to the learned trial Judge on 25th January, 2002. The learned trial Judge in Court Fee Reference No.4 of 2002 rejected the objections taken by the plaintiff against the report of the Court Fees Inspector. The trial Court found that as the plaintiffs have not produced jantri from the Sub-Registrar's office, there was no reason to discard the report of the Court Fees Inspector. The trial Court accordingly accepted the report and asked the plaintiff to pay the deficit court fees of Rs.14,970 within the stipulated time. The present petitioners thereafter submitted review application, being Civil Misc. Application No.557 of 2002, on the ground that since now the plaintiffs are in a position to produce jantri, the appropriate court fees may be fixed taking into account the jantri. The learned trial judge came to the conclusion that since the decision was taken earlier on merits, the Court cannot review its own earlier order and accordingly the said review application was rejected, which has given rise to this Civil Revision Application.

2 Mr M.S. Shah, learned advocate for the petitioners, submitted that in view of the documentary evidence in the form of jantri, the court fees may be fixed afresh and therefore the matter may be remanded to the trial court to reconsider the court fees amount after taking into consideration the jantri. The learned advocate for the respondents submits that the matter may be remanded to the trial court for a fresh decision and the trial court may be requested to decide the appropriate court fees in accordance with jantri produced by the petitioners. Considering the aforesaid aspect of the matter and considering the documentary evidence in the form of jantri which is already produced on record, the trial court is directed to rehear Court Fee Reference No.4 of 2002 and decide the same afresh after considering whatever documentary evidence that may be produced by the parties.

3 This C.R.A. is allowed. The matter is remanded back to the trial court for deciding the question of court fees. The order of the learned trial Judge dated 2.8.2002 passed in Court Fee Reference No.4 of 2002, by which the petitioners were asked to pay deficit court fees of Rs.14,970, is set aside. The said reference is restored on the file of the learned trial Judge and the same is ordered to be decided afresh. Writ to be sent down to the trial court forthwith.

(P.B. Majmudar, J.)

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